STATE OF MICHIGAN

COURT OF APPEALS

NACRETIA TERRY,

Plaintiff-Appellant,

v

SUR-FLO PLASTICS & ENGINEERING, INC., KERRY CARRIZAL, and VERNON SCHERRER,

Defendants-Appellees.

UNPUBLISHED
October 21, 2003

No. 239887
Macomb Circuit Court
LC No. 00-003826-NO

Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendants' motions for summary disposition under MCR 2.116(C)(10). We affirm.

This case arose after plaintiff suffered hazing for her masculine appearance and mannerisms during her temporary employment at defendant Sur-Flo's factory. The demeaning conduct and comments culminated when defendant Scherrer, a supervisor for Sur-Flo, told an employee that plaintiff could use a bucket rather than receive a requested bathroom break. When the employee took the bucket to plaintiff and relayed what Scherrer said, plaintiff provided a vulgar retort and asked to see defendant Carrizal, Scherrer's supervisor. According to plaintiff's version of events, Carrizal smirked when she recounted the bucket incident, and that reaction caused plaintiff to request an audience with Carrizal's supervisor. Rather than grant the request, Carrizal terminated her employment.

Plaintiff first argues that the trial court erred when it granted defendants summary disposition on her hostile-environment sexual harassment claims under the Michigan Civil Rights Act (CRA), MCL 37.2101 *et seq*. We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). To sustain an action under the CRA against an employer for hostile-environment sexual harassment, a plaintiff must establish that

(1) the employee belonged to a protected group;

(2) the employee was subjected to communication or conduct on the basis of sex;

(3) the employee was subjected to unwelcome sexual conduct or communication;

(4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and

(5) respondeat superior. [*Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993); see also MCL 37.2103(i), 37.2202(1)(a).]

The Legislature did not intend the CRA to create personal liability for individual supervisors who discriminate against their workers. *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 485; 652 NW2d 503 (2002). Thus, plaintiff's claims against Carrizal and Scherrer automatically fail.

Furthermore, our Supreme Court recently explained that the CRA's sexual harassment provision by its clear terms only guards against conduct or communication that is sexual in nature:

> [T]he CRA, MCL 37.2103(i), defines "sexual harassment" as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature . . . ." It is clear from this definition of sexual harassment that only conduct or communication that is sexual in nature can constitute sexual harassment, and thus conduct or communication that is gender-based, but that is not sexual in nature, cannot constitute sexual harassment. [*Haynie v Dep't of State Police*, 468 Mich 302, 312; 664 NW2d 129 (2003).]

Defendant argues that plaintiff failed to allege any conduct or comment that was sexual in nature. While we agree with plaintiff that the alleged conduct and comments by Scherrer regarding plaintiff using a bucket were crude and demeaning, we agree with defendant that they were not sexual in nature under *Haynie*. Because the CRA does not itself define what it means by "sexual nature," see MCL 37.2103(i), we may turn to a dictionary definition. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). In pertinent part, "sexual" is defined as "[i]mplying or symbolizing erotic desires or activity." *The American Heritage Dictionary* (2d college ed). The alleged crude remark by Scherrer, while offensive, had nothing to do with any erotic desire or activity. It was not a communication "of a sexual nature" under the CRA.[1] Accordingly, under *Haynie* summary disposition of plaintiff's claims under the CRA was proper.

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[1] Apart from the bucket incident, plaintiff only alleged general instances of what she considered to be sexually charged remarks by unidentified coworkers, and admitted that she never told Sur-Flo management about the remarks. Without evidence that Sur-Flo knew of the comments, plaintiff's sexual harassment claims against Sur-Flo based on these allegations fail. *Jager*, *supra* at 473.

Next, plaintiff argues that the trial court erroneously granted defendants summary disposition on her intentional infliction of emotional distress claims. To maintain an action for intentional infliction of emotional distress, a plaintiff must prove "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). We note at the outset of this issue that plaintiff's fellow laborers were not acting within the scope of their employment when they taunted plaintiff, invaded her privacy, threatened her, and otherwise tormented her for her appearance. Therefore, plaintiff may not hold Sur-Flo liable for their conduct. *Borsuk v Wheeler*, 133 Mich App 403, 410; 349 NW2d 522 (1984).

Further, the alleged offensive remarks and conduct did not amount to extreme and outrageous conduct sufficient to state a claim, as they did not cross the high threshold of being "atrocious and utterly intolerable in a civilized community." *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Nor did Carrizal's termination constitute intentional infliction of emotional distress. Our Supreme Court has previously held that much more severe employment terminations fall well short of outrageous behavior. See *Fulghum v United Parcel Service, Inc*, 424 Mich 89, 96-98; 378 NW2d 472 (1985). Finally, plaintiff failed to proffer any evidence that she suffered severe distress. Because plaintiff failed to provide evidence sufficient to sustain her intentional infliction of emotional distress claims against her fellow employees, her claim against Sur-Flo also fails.

We affirm.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Pat M. Donofrio